



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Consider the Adoption of a General
Order and Procedures to Implement the
Digital Infrastructure and Video
Competition Act of 2006.

R. 06-10-005

**OPENING COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES**

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 6.2 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the schedule set forth in Rulemaking (R.) 06-10-005, the Division of Ratepayer Advocates (DRA) submits these Opening Comments on the Commission's Rulemaking to adopt a new General Order (GO) and institute new procedures for implementing Assembly Bill (AB) 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) mailed on October 6, 2006. With this Rulemaking, the Commission takes steps to implement the new responsibilities given to it by the Legislature to bring the benefits of increased competitive choice for video and broadband services to all Californians, a goal that DRA supports. Given the importance of this goal, it is crucial that the Commission's franchise process implementing the legislation be open and transparent, allow for public input, and provide data that the Commission, DRA, and others can use to accurately assess franchisee's compliance with the various requirements, such as infrastructure build-out, consumer protection, and customer service.

Accordingly, DRA proposes the following revisions to the draft GO:

1. The GO should include a description of DRA's role under DIVCA;
2. The GO should contain express language devoted to enforcement of DIVCA's prohibitions of cross-subsidies;
3. The GO should allow for protests to state video applications and provide process for timely handling of such protests;
4. The GO should require public notice of applications for state video franchises, including posting of applications on the Commission's website within 24 hours of their receipt by the Commission; and
5. The GO should allow local entities, DRA, and members of the public to bring complaints to the state franchising authority that a state video franchise holder is not complying with the statutory requirements of DIVCA.

II. DISCUSSION

A. DRA's Authority to Advocate on Behalf of Video Customers

Section 5900(k) of DIVCA mandates a specific role for DRA that is in addition to the Commission's own franchise licensing responsibilities under the bill. The legislation requires DRA to advocate on behalf of video customers. DRA will also be responsible for assessing compliance with specific and measurable infrastructure build-out requirements and prohibitions against discrimination, issues associated with the basic residential telephone service rate freeze, and customer service and consumer protection standards.¹ DRA herein provides revisions to the language of the draft GO to clarify

¹ § 5900(k) reads: "The Division of Ratepayer Advocates shall have authority to advocate on behalf of video customers regarding renewal of a state-issued franchise and enforcement of Sections 5890, 5900, and 5950. For this purpose, the division shall have access to any information in the possession of the commission subject to all restrictions on disclosure of that information that are applicable to the commission." § 5890 prohibits discrimination against any group of potential residential subscribers because of the income of the residents in the local area in which the group resides; § 5900 requires compliance with certain customer service and consumer protection standards; § 5950 prevents a telephone
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these responsibilities and to explicitly include DRA in various notification, service, and data production requirements.

B. Prohibitions Against Cross-Subsidization

Under existing law, the Commission has certain on-going obligations to ensure that telephone utilities do not cross-subsidize the operations of their non-regulated services with revenues from the regulated utility. DIVCA adds to that obligation by specifically prohibiting a telephone utility operating under a state-issued video franchise from using revenues from residential, primary line, basic telephone service rates to subsidize the deployment of its video network.²

The OIR recognizes that it is necessary that franchise holders not be able to “evade important statutory provisions – such as those applying to ... cross-subsidization...”³ However, the draft GO does not include language addressing these requirements of DIVCA. Therefore, DRA has revised the text accordingly. A new section devoted to Enforcement of Prohibitions Against Cross-Subsidies has been added to the draft GO.

C. Protests To Applications

The GO as drafted does not provide opportunity for protests to state video franchise applications. As far as DRA can determine, there is no basis in DIVCA or specifically in § 5840 to warrant such a denial of due process. Indeed, the requirement that the applicant for a state video franchise deliver a copy of the application “to any local entity where the applicant will provide service”⁴ is an acknowledgement that local entities should be afforded an opportunity to bring any concerns they might have to the

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corporation providing video service pursuant to a state-issued franchise as an incumbent local exchange carrier from increasing rates for residential, primary line, basic telephone service above the rate as of July 1, 2006 until January 1, 2009.

² § 5940 states: “The holder of a state franchise under this division who also provides stand-alone, residential, primary line, basic telephone service shall not increase this rate to finance the cost of deploying a network to provide video service.”

³ Order Instituting Rulemaking (OIR), October 5, 2006, at 13.

Commission. Similarly, other members of the public may have concerns they wish to raise to the Commission regarding the Application. Accordingly, DRA has drafted language permitting protests of state video franchise applications. DRA's added language reads, in part:

Protests to Video Franchise Applications are allowed and must be submitted to the Commission within fifteen calendar days of the posting of the Application on the Commission's website. Protests shall be concurrently served on the applicant and to each person listed in the application as being authorized to receive service and upon the Division of Ratepayer Advocates. A protest objecting to the granting, in whole or in part, of the authority sought in the Application shall state facts constituting the grounds for the protest and state the reason why the Application is deficient in light of the statutory requirements of Public Utilities Code, Division 2.5.

Permitting protests, providing for a limited time period within which they can be submitted and requiring identification of specific deficiencies will not harm the Commission's ability to efficiently process Applications, but will provide necessary due process rights and assist the Commission in identifying areas where an Application is incomplete or otherwise deficient.

D. Public Notice

The draft GO would require video franchise Applications to be filed with the Commission and provided to the Commission's Executive Director. It is unclear, however, whether this type of Application filing would appear on the Commission's Daily Calendar.

Given the short time period for protests which DRA has proposed, and the time frames for processing these Applications contained in the draft GO, it is essential that DRA and other interested parties receive expedited notice of these filings. With that in mind, DRA recommends that notice of submitted franchise applications be posted on the

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⁴ § 5840(e)(1)(D).

Commission's website within 24 hours of their receipt by the Commission. Ideally, the non-proprietary portions of the Applications should be posted on the Commission's website as well. But, at a minimum, notice of the filing must be posted, preferably in a specially titled portion of the website to facilitate quick and easy review. Given the time-constraints for assessing submitted applications, including protests regarding their deficiencies, timely public notice via the Commission's website is crucial.

E. Enforcement Of Obligations

As the draft GO notes, "A State Video Franchise is subject to suspension or revocation if a Video Service Provider fails to comply with the applicable requirements of Division 2.5 [of] the Public Utilities Code."⁵ However, the draft GO does not describe any enforcement mechanism and there is no provision for complaints regarding enforcement of compliance by video service providers. A complaint process is necessary and the GO should specify what the process is. Accordingly, DRA proposes that the following language:

Local governments, the Division of Ratepayer Advocates or members of the public may bring a complaint to the Commission that a holder of a state video franchise is not offering services as required by Public Utilities Code § 5890, or the Commission may open an investigation on its own motion. In cases arising from complaints to enforce Public Utilities Code § 5890, the Commission shall follow the procedures for handling complaints described in Rule 4.1 of the Commission's Rules of Practice and Procedure, with such modifications as are suitable for video franchising, including the requirement that the state franchising authority shall hold public hearings before issuing a decision.

⁵ Draft General Order at 17.

III. OTHER ISSUES ADDRESSED BY THE OIR AND GENERAL ORDER

A. Prohibition Against Multiple Franchises

The OIR tentatively concludes that the Commission should “prohibit the holding of multiple franchises through separate subsidiaries or affiliates of a single enterprise⁶ stating that

We make this tentative conclusion... because we believe it is necessary for effective implementation of AB 2987. It otherwise would be difficult, if not impossible, for the Commission to monitor and enforce statutory provisions when a single company has multiple subsidiaries or affiliates. A company offering a variety of communication services could evade important statutory provisions – such as those applying to build-out, reporting, and cross-subsidization – if we only awarded a state video franchise to a company’s video affiliate or its affiliates representing individual service areas.⁷

The Commission also notes that a company offering both telecommunications and video services could avoid the prohibition against cross-subsidization “by dividing its telecommunications and video operations into two different affiliates and seeking to obtain a state franchise in the name of its video affiliate only.”⁸ DRA agrees that the restrictions the OIR proposes to apply to state video franchise holders are indeed “necessary and reasonable”,⁹ and should serve to reduce the potential for franchisees to evade compliance with statutory requirements. DRA cautions, however, that while a franchise restriction should help prevent cross-subsidization, it will not guarantee that cross-subsidization will not occur.

B. User Fee

Because newly minted video franchise holders may not yet have retail video customers, the OIR adopts a “plan to set each state video franchise holder’s quarterly

⁶ OIR at p. 12.

⁷ OIR at pp.12-13; footnotes omitted.

⁸ OIR at p.13, note 29.

[user fee] installment during the first fiscal year of the program at [an] amount equal to the fee approved by the Department of Finance divided by the total number of state video franchise holders in that quarter.”¹⁰ Thereafter the Commission plans to base the fee “on a pro rata subscriber basis, which relies upon subscriber information submitted for each quarter.”¹¹ The OIR invites parties to comment on its proposed methodology. While DRA will review with interest what others have to say, we have long supported revenue-based fees assessed per subscriber according to usage, and see no reason in this proceeding to depart from that preference.

C. Category of Proceeding

The OIR categorizes the Rulemaking as quasi-legislative.¹² While DRA has no objection to this categorization at this time, DRA reserves the right to address this in its Reply Comments, including the need for evidentiary hearings, in light of what other parties present in their Opening Comments.

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⁹ OIR at p.14.

¹⁰ OIR at p.23.

¹¹ OIR at p. 23.

¹² OIR at p. 26.

IV. CONCLUSION

For the reasons stated above, DRA recommends that the Commission adopt our proposed revisions to the draft GO.

Respectfully submitted,

/s/ SINDY YUN

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October 25, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING
COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES** in
R.06-10-005 by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an
e-mail message to all known parties of record to this proceeding who provided
electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to
all known parties of record who did not provide electronic mail addresses.

Executed on October 25, 2006 at San Francisco, California.

/s/ ALBERT HILL
Albert Hill

N O T I C E

Parties should notify the Process Office, Public Utilities
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San Francisco, CA 94102, of any change of address and/or
e-mail address to insure that they continue to receive
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